

REMARKS/ARGUMENTS

**Claims Status**

Claims 1-14 and 16 are pending. Claim 15 is currently canceled without prejudice.

Claims 1-14 and 16 are currently amended for numerous reasons, for example to improve readability, to improve clarity, correct antecedent basis, and to place the application in better format for further examination/allowance. No new matter is believed to have been added.

**Specification Objection**

The specification has been objected to for not including examples 3 and 4, and presumably 10 and 11 as well (see Office Action, page 2, item 3). Examples 3, 4, 10 and 11, and corresponding stabilizers 4-7 and 9 of the examples, as well as the corresponding sections of text throughout the specification, have been re-instated from the original specification of the international PCT Application corresponding to the current US application. Therefore, as the current application is a 371 of PCT/EP04/08011, the reinstatement of the examples/stabilizers/text from the original specification of PCT/EP04/08011 is not new matter.

In view of the amendments to the specification, it is believed that this objection has been overcome and Applicants respectfully request its withdrawal.

**§112, 2<sup>nd</sup> paragraph, Rejections**

Claims 1-16 are rejected as indefinite for a myriad of reasons as described by the Examiner in parts A) through N) of the outstanding Office Action (pages 2-5). As described above, claims 1-14 and 16 have been amended in numerous ways and claim 15 has been canceled. Accordingly, Applicants submit that the amendments to the claims have overcome

all of the rejections as explained by the Examiner. As such, Applicants request withdrawal of these rejections.

**Non-Statutory Obviousness-Type Double Patenting**

Applicants respectfully request that this rejection be held in abeyance until the present application is in condition for allowance for the following reasons. A terminal disclaimer can be filed, if the claims in the present application remain obvious in view of the claims of cited U.S. patent applications 11/914,242 at the time of allowance of the present application. Furthermore, additional amendments (if needed for allowance of these claims) may eliminate the double-patenting rejection, making the filing of a Terminal Disclaimer at this time premature. Indeed, M.P.E.P. § 804.02 IV states that, prior to issuance, it is necessary to disclaim each one of the double patenting references applied. Hence, Applicants respectfully request that the examiner contact the undersigned should the present amendments and arguments be accepted and should the present application be otherwise in condition for allowance. At that time, a terminal disclaimer if warranted can be supplied to expedite issuance of this case.

Additionally, please note that the present application has an effective U.S. filing date of July 17, 2004 whereas the cited U.S. patent applications 11/914,242 has an effective filing date of May 17, 2006. Therefore the present application is clearly the earlier filed application when compared to the cited application. Thus, pursuant to M.P.E.P. §804 (Part I.B.1) which states:

“If a ‘provisional’ nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. Or, “If ‘provisional’ ODP rejections in two applications are the only rejections remaining in those applications, the examiner

Application No. 10/565,772  
Reply to Office Action of April 6, 2009

should withdraw the ODP rejection in the earlier filed application thereby permitting that application to issue without need of a terminal disclaimer.”

Accordingly, Applicants request that this rejection be withdrawn if it remains the only rejection of record.

### **Conclusion**

For the reasons discussed above, Applicants submit that all now-pending claims are in condition for allowance. Applicants respectfully request the withdrawal of the rejections and passage of this case to issue.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon



Justine M. Wilbur  
Attorney of Record  
Registration No. 59,678

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/07)